
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**BRENDA K. KNUTSON, an individual,
and DOUGLAS SCOTT KNUTSON, an
individual,**

Plaintiffs,

vs.

**MGC MORTGAGE, INC., a Texas
corporation,**

Defendant.

REPORT & RECOMMENDATION

Case No. 2:15-cv-289

District Judge Jill N. Parrish

Magistrate Judge Dustin B. Pead

On September 14, 2015, this court issued an order to show cause requiring Plaintiffs Brenda and Douglas Knutson (“Plaintiffs”) to show cause as to why their case should not be dismissed for the reasons set forth in Defendant MGC Mortgage’s (“Defendant”) motion to dismiss (Dkt. No. 10).¹ The court granted Plaintiffs fourteen days within which to respond and indicated a failure to do so would result in a recommendation of dismissal to the District Court. *Id.*

The time frame to respond has now expired, and Plaintiffs have failed to address Defendant’s motion to dismiss or establish subject matter jurisdiction by alleging that the amount in controversy exceeds the minimum required \$75,000. Plaintiffs’ claim they are entitled to

¹This matter was referred to Magistrate Judge Dustin Pead by District Court Judge Jill N. Parrish pursuant to 28 U.S.C. §636(b)(1)(B) (Dkt. No. 9).

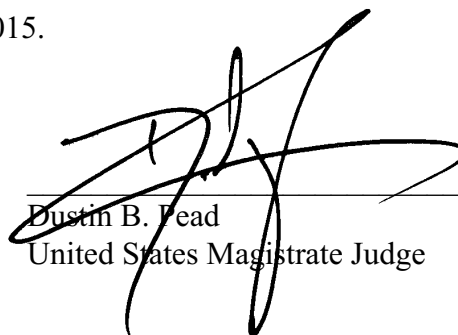
damages “to be determined at the time of trial” is insufficient to affirmatively establish the amount in controversy for purposes of federal jurisdiction (Dkt. No. 1). *See Schwartz v. Woodruff, Inc.*, 1997 U.S. App LEXIS 7156, *4 (10th Cir. Utah Apr. 15, 1997) (unpublished) (“The requisite amount in controversy and the existence of diversity must be affirmatively established in the pleading of the party seeking to invoke jurisdiction.”). Further, because all of Plaintiffs’ claims for relief arise under state law, the court does not have “federal question” jurisdiction over this action pursuant to 28 U.S.C. § 1331.

For these reasons, the court hereby RECOMMENDS to the District Court that Plaintiffs’ claims be DISMISSED pursuant to Federal Rule of Civil Procedure 12(b)(1) for failure to establish jurisdiction.

Copies of this Report and Recommendation shall be sent to all parties who are hereby notified of their right to object within fourteen (14) days. Failure to object may constitute a waiver of objections upon subsequent review. *See* Fed. R. Civ. P. 72(b)(2) (“Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations”).

IT IS SO ORDERED.

DATED this 5th day of October, 2015.



Dustin B. Fead
United States Magistrate Judge